

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2618 OF 2006

Godfrey D'Silva,
Proprietor of Tarine Enterprises

..Petitioner

V/s

The State of Maharashtra & Ors.

....Respondents.

Mr. L.R. Castelino for the Petitioner.

Mr. Vinod Bhagat with Mr. Kiran Mehta i/b G.S. Hegde & V.A. Bhagat
for respondent Nos. 2 and 3.

Mr. Y.S. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE : 3rd October, 2007.

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent Nos. 2 and 3.

2. Petitioner is challenging the complaint which is filed against the Petitioner under the provisions of Copyright Act. The learned Counsel for the Petitioner submits that this complaint is not maintainable in view of the provisions of section 115 of the Trade Marks Act. It is submitted that the Petitioner started manufacturing cosmetic products after a trade mark was granted in favour of petitioner in 2002. It is

further submitted that, thereafter, Petitioner started manufacturing product by name 'Kem Nova'. A complaint was filed by Respondents, alleging infringement of copyright. It is submitted that there is a registered trade mark in favour of the Petitioner and, as such, the Magistrate could not have taken cognizance under section 115 of the Trade Marks Act. It is submitted that, under the said provisions, the Magistrate would take cognizance only if complaint is filed by the Registrar or an authorized officer. This submission cannot be accepted. Perusal of the FIR clearly indicates that the complaint has been filed under the provisions of sections 51, 63 and 65 of the Copyright Act and, therefore, the provisions of Trade Marks Act will not apply to the said complaint. It is further submitted that, on merits, the said complaint is not maintainable since the Petitioner has already a registered trade mark and has been manufacturing the said product since 2002. It is further submitted that Respondents also do not have any right over the said product. In my view, this question cannot be decided at this stage while exercising writ jurisdiction or inherent jurisdiction of this Court.

3. Hence, no case is made out for quashing the complaint at this stage. Writ Petition is accordingly dismissed. All contentions, however, raised by the Petitioner are kept open and the Trial Court shall decide the same in accordance with law.

(V.M. KANADE, J.)

